

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 28, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0235

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

NEWTON MANUFACTURING COMPANY CORP.,

Plaintiff-Appellant,

v.

**DEPARTMENT OF INDUSTRY, LABOR AND
HUMAN RELATIONS, LABOR AND INDUSTRY
REVIEW COMMISSION, CARL H. STEDER
and DAVID A. PASCHKE,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J. and Dykman, J.

PER CURIAM. Newton Manufacturing Company Corporation appeals from an order affirming a decision of the Labor and Industry Review Commission (LIRC). The issue is whether LIRC properly determined that sales representatives who sold Newton products in Wisconsin were employees under

§ 108.02(12), STATS., for unemployment compensation purposes. We affirm LIRC's determination.

An individual who performs services for an "employing unit" is an employee unless the employing unit shows both that it lacked control and direction over the individual's performance of services, and that the individual performed services while engaged in an independently established trade, business or profession in which the individual is customarily engaged. Section 108.02(12)(a) and (b), STATS. Five factors determine whether the individual was engaged in an independent trade: whether his or her services were directly related to the company's economic activity; whether he or she advertised the existence of an independent business; whether he or she assumed the financial risk of the undertaking; whether he or she was economically dependent upon the company; and whether he or she had a proprietary, or saleable, interest in the enterprise. *Keeler v. LIRC*, 154 Wis.2d 626, 632-34, 453 N.W.2d 902, 904-05 (Ct. App. 1990).

Because the facts in this case are not disputed, the question whether Newton's representatives are employees is a question of law. *Nottelson v. DILHR*, 94 Wis.2d 106, 115-16, 287 N.W.2d 763, 768 (1980). Because of its expertise in resolving this question, we give great weight to LIRC's conclusion. *LifeData Medical Servs. v. LIRC*, 192 Wis.2d 663, 671, 531 N.W.2d 451, 455 (Ct. App. 1995). Consequently, we will affirm LIRC's determination if a rational basis exists for it. *Madison Metro. Sch. Dist. v. Wisconsin Employment Relations Comm'n*, 133 Wis.2d 462, 467, 395 N.W.2d 825, 828 (Ct. App. 1986).

The parties stipulated that the representatives' services were related to and integrated into Newton's business. The evidence also included the following: the representatives who advertised identified themselves as Newton's representatives; the representatives incurred little or no financial risk; and the representatives had little or no proprietary interest in their sales activities. Although there was little evidence that the mostly part-time representatives were economically dependent on Newton, that fact need not be given particular weight. *Keeler*, 154 Wis.2d at 634, 453 N.W.2d at 905. The evidence presented on the other four *Keeler* factors provides a rational basis for LIRC's conclusion. We therefore affirm even though other facts in evidence might have allowed LIRC to reach the alternative conclusion. *Madison Sch.*

Dist., 133 Wis.2d at 467, 395 N.W.2d at 828. Because LIRC reasonably concluded that Newton's representatives did not engage in an independently established trade, we need not review whether Newton exercised sufficient control and direction over the representatives' performance.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.